No. 93-1779 (6)

Supreme Court, U.S.
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In the Supreme Court of the United States

October Term, 1993

William A. Calvo, III,

Petitioner

- against -

The Florida Bar

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

William A. Calvo, III, *Pro Se*
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Dated: September 15th, 1994

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21 pp

QUESTIONS PRESENTED

1. Does the Supreme Court have jurisdiction to review the decision of the Florida Supreme Court in this matter?
2. Has the Petitioner complied with Supreme Court Rule 14.1(h)?
3. Are there substantial federal questions for review by the Supreme Court?

LIST OF PARTIES

The Parties to the proceeding below are:

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102 Stat. 662, 28 U.S.C. Section 1257 (June 27, 1988), page 1.

REGULATIONS & RULES

Supreme Court of the United States

Rule 14.1(h), pages 1 and 2.

The Florida Bar

Current Rules Regulating the Florida Bar

Rule 3-4.3, pages 3 (notes 6 and 7).

Rule 4-4.1, pages 3 (notes 6 and 8).

Rule 4-4.8, pages 3 (notes 6 and 9).

Former Florida Code of Professional Responsibility

Rule 1-102(A)(6), pages 3 (note 9), 4, 5, 5 (note 12) and 6.

CASES

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The Florida Bar, 329 So.2d 301 (Fla. 1975), page 2 (note 4).

Florida Bar v McCain, 361 So.2d 700, 705 (Fla. 1978), pages 11 and 11 (note 26).

The Florida Bar v Neu, 597 So.2d 266 (Fla. 1992), page 12 (note 29).

United States

Abell v. Potomac Ins. Co., 858 F.2d 1104, 1133 (5th Cir. 1988), cert. denied, 492 U.S. 918 (1989), page 14 (note 33).

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Central Bank of Denver, N.A. v First Interstate Bank, No. 92-854 (April 19, 1994), 114 S.Ct. 1439; 61 U.S.L.W. 1813 (1994), pages 5 and 17-18.

Cohen v Hurley, 366 U.S. 117, 6 L.Ed. 2d 156, 81 S.Ct. 954 (1961), pages 7 (note 16) and 18 (note 33).

Fuentes v Shevin, 92 S.Ct. 1983, 407 U.S. 67, 32 L.Ed 2d 556 (1972), page 9 (note 21).

In re Cascade International Securities Litigation.; United States District Court, Southern District of Florida, Case No. 91-8652-CIV-NESBITT, December 15, 1993; CCH F.SEC.L.Rep. Paragraph 98,110, pages 17 (note 37) and Reply Appendix at page 166 *et. seq.*

In Re Snyder, 427 U.S. 634, 105 S.Ct. 2874, 86 L.Ed. 2d 504 (1985), page 15 (note 34).

Matthews V Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed. 18 (1976), page 9 (note 21).

Schatz, et. al. v Rosenberg, et. al., (4th Cir. 1991), reported at 91 CCH F.Sec.L.Rep. - Decisions - Paragraph 96,222, page 17 (note 38).

Truax v Corrigan, 257 U.S. 320, 42 S.Ct. 124, 66 L.Ed 254 (1921)), page 12 (note 27).

OTHER SOURCES

The Florida Bar News, January 15, 1994, reported on page 24, "*Securities Violation; Disbarrment: William A. Calvo, III, P.O. Box 208, Belleview, disbarred effective January 15, 1994.*, page 16.

I. REPLY TO SUMMARY OF ARGUMENT

The Respondent raised three issues in its summary: that the Petitioner failed to establish the jurisdiction of this Court; that there are no substantial federal questions; and, that the petition for writ of certiorari (the "Petition") failed to comply with Supreme Court Rule 14.1(h). The Petitioner notes that he demonstrated jurisdiction in this matter by citation to 102 Stat. 662, 28 U.S.C. Section 1257 (June 27, 1988),[1] the federal statute granting this Court jurisdiction to review decisions of state courts of last resort; that the Respondent itself characterized the basis for the Petitioner's disbarrment as violation of federal securities laws and introduced expert testimony at the proceeding below only as to federal securities laws;[2] and, that the Petitioner's errors in compliance with Rule 14.1(h) were harmless in that the required information was provided under the caption "Argument."[3]

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1. See Reply Appendix at page 207.

2. The testimony of the Respondent's only expert witness in this matter, James W. Beasely, Jr., was limited to issues of federal securities law. It occupies 160 pages of the record (15% of the entire proceeding), and, together with the cases interpreting federal securities laws (the Warehouse Injunction Case and the Warehouse 2e Proceeding) improperly introduced by the Respondent, formed the basis for the decision below.

3. The Respondent did not include citations to excerpts of matters below in his original Petition based on a discussion with personnel in the

In analyzing the proceedings below and compliance with Rule 14.1(h), the Court is urged to note the Respondent's theory for Florida Bar proceedings, *i.e.*, that the role of a referee is only advisory, disciplinary proceedings being original actions in the Florida Supreme Court with the first and only appellate stage being the motion for rehearing.[4]

II. REPLY TO ARGUMENT

1. Compliance with Rule 14.1(h)

The Respondent argues that the Petitioner failed to establish how constitutional issues and federal questions were raised below because such information was not provided un-

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office of the Court's Clerk, where the Respondent was advised that he was not required to cite to the record in certiorari proceedings. In order to assure that this Court is satisfied that all points in the Petition were properly raised below the Petitioner has filed an additional appendix herewith (the "Reply Appendix") containing relevant portions of materials referred to herein. For purposes of clarity, the references to when and how issues were initially raised below is contained either in the text, or in footnotes to the text of the Petitioner's rebuttal of the Respondent's argument.

4. "A Referee's decision in a disciplinary matter is not final, and therefor not subject to interlocutory appeal. The Florida Bar, 329 So.2d 301." Excerpt from Respondent's motion to Dismiss Appeal of Order Limiting Issues at Trial, page 2, filed with the Florida Supreme Court by the Respondent on or about December 31, 1991. See Docket entry number 30 at Reply Appendix page 7.

der the heading "Statement of the Case." It does not claim that they were not raised below. Such information was provided under the heading "Argument" and is augmented herein. Consequently, the Petitioner urges the Court to consider such deficiency in the Petition as harmless error.

2. Federal Questions Relating to Due Process

A. Vagueness:[5] The cases cited by the Respondent are not determinative since they are distinguishable on two major points. First, the examples cited involve rules that reference other rules regulating the practice of law thus providing ascertainable standards of professional conduct. The challenged rule does the opposite by referencing "any other conduct" outside the rules of professional conduct. The second point makes that fact clear. In the instant case the Respondent voluntarily dismissed all counts dealing with rules prohibiting attorneys from engaging in fraudulent conduct[6] (Rules 3-4.3,[7] 4-4.1[8] and 4-8.4[9] of the Rules Governing the

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5. The issue of vagueness was raised by the Petitioner in his Motion for Rehearing filed with the Florida Supreme Court, see Reply Appendix at page 63, *et. seq.*

6. Order of Referee dated July 20, 1992, dismissing all counts based on Rules 3-4.3, 4-4.1 and 4-8.4 of the Rules Governing the Florida Bar, as requested in the Respondent's motion for partial voluntary dismissal of complaint filed on or about April 27, 1992.

Florida Bar), thus, the prohibitions reflected in DR 1-102(A)(6) involved something other than the prohibitions reflected in the counts voluntarily dismissed.

The Respondent suggests that the challenged rule should not be read in a vacuum and that this Court must consider the

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7. Rule 3-4.3 provides as follows: "The standards of professional conduct to be observed by members of the bar are not to be limited to the observance of rules and avoidance of prohibitive acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed all inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by an attorney of any act which is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed in the State of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline."

8. Rule 4-4.1 provides as follows: "Truthfulness in Statements to Others. In the course of representing a client a lawyer shall not knowingly: (a) Make a false statement of material fact to a third person; or (b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting in a criminal act by a client, unless disclosure is prohibited by rule 4-16."

9. Rule 4-8.4 replaced former DR 1-102(A) and provides as follows: "Misconduct: A lawyer shall not: (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; (d) Engage in conduct that is prejudicial to the administration of justice; (e) State or imply an ability to influence improperly a government agency or official; or (f) Knowingly assist a judge or judicial officer in conduct that is a violation of the applicable rules of judicial conduct or law."

Referee's findings of fact concerning the Petitioner's acts. The Petitioner urges that the Referee's findings of fact not be considered in a vacuum but analyzed in light of their dearth of support in the record (except through multiple hearsay testimony[10] and the findings of fact in proceedings involving lowered standards of proof)[11] and in light of this Court's ruling in Central Bank of Denver, N.A. v First Interstate Bank, No. 92-854 (April 19, 1994), 114 S.Ct. 1439; 61 U.S.L.W. 1813 (1994). The deficiencies in the fact finding process are a major factor justifying this Court's review of the decision below.

The Respondent misstates the Petitioner's argument concerning the effect on DR 1-102(A)(6) of the re-enactment of the Florida Code of Professional Responsibility without its inclusion (although every other part of DR 1-102[A] was re-adopted).[12] The Petitioner clearly asserted that it was

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10. Denied in sworn affidavits by the purported declarants.

11. Involving an issue, on its own, worthy of this Court's consideration, *i.e.*, whether the introduction of judgments involving lower standards of proof is constitutionally permissible.

12. The Petitioner's challenge to DR 1-102(A)(6) was initiated through the Respondent's counter motion to dismiss complaint or for summary judgment filed on or about May 1, 1992, and denied by the Referee on August 15, 1992. It was also raised at the Final Hearing and in the Petitioner's briefs to the Florida Supreme Court. See Record of Final

only the former rules not substantially re-enacted in the new Code that could no longer be enforced. In fact, all of the counts voluntarily dismissed by the Respondent involved provisions of the new Code of Professional responsibility substantially re-enacted from DR 1-102(A) and all continue as viable predicates for action. The Respondent's strategy involved an attempt to avoid the stringent standards of proof required to prove allegations of fraud by dismissing such counts and instead relying on a predicate rule so vague as to cover any conduct that someone might find objectionable. That is not constitutionally permissible and this Court should examine such issue by granting the Petition.

B. Ex Post Facto Aspects:[13] The Respondent argues that the constitutional prohibition against *ex post facto* laws does not apply to rules regulating the practice of law. That contradicts its position below.[14]

Hearing at Reply Appendix at page 24, *et. seq.*; and, the Petitioner's Motion for Rehearing starting at Reply Appendix page 63.

13. The issue of ex post facto legislation was initially raised (although the term ex post facto was not used) by the Petitioner's Motion for Rehearing, the earliest time at which the change in law reflected in the action below could be challenged. See Petitioner's Motion for Rehearing at Reply Appendix, page 65, *et. seq.*

14. As enunciated in the Registrant's response to the Petitioner's

The Respondent acknowledged that a change in standard of proof would constitute a prohibited *ex post facto* action. The Florida Supreme Court improperly permitted the introduction of multiple stage hearsay evidence and final judgments in proceedings involving the "preponderance of the evidence" standard of proof to serve as the sole evidence supporting the judgment below (which required proof under the higher "clear and convincing" standard).[15] This Court should accept certiorari to establish whether rules regulating conduct with consequences more onerous than criminal sanctions[16] should be subjected to restrictions against *ex post facto* action under the due process and equal protection clauses of the Fourteenth Amendment and whether introduction of judgments involving standards of proof lower than required in the subject action are constitutionally tenable.

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counter motion to dismiss complaint or for summary judgment, filed with the Florida Supreme Court by the Respondent on or about May 8, 1992, see Docket item 60 at Reply Appendix page 11.

15. That issue was initially raised in the Petitioner's Appeal Brief to the Florida Supreme Court, see Reply Appendix at page 27, *et. seq.*

16. See dissent of Justice Douglas in Cohen v Hurley, 366 U.S. 117, 6 L.Ed. 2d 156, 81 S.Ct. 954 (1961).

C. Denial of Assistance of Counsel:[17] The Petitioner argues that so long as an attorney can be drafted to continue a proceeding[18] a prosecuting attorney may without justification other than a claim that he intends to call a defendant's attorney as a "rebuttal" witness (without even following through on such assertion), cause the dismissal of a defendant's chosen counsel from any case. That argument makes a mockery of the right to counsel. The presiding official of any tribunal has broad discretion to regulate the proceedings before him but that discretion is not boundless. In the instant case, an examination of the record[19] demonstrates that no facts were presented to the Referee justifying depriving the Petitioner of his right to representation by an attorney prepared for such role. This Court should grant the Petition in order to consider the issue since if the Respondent's argument is to prevail all rights of defendants

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17. This issue was originally raised in the Petitioner's Appeal Brief to the Florida Supreme Court, see Reply Appendix at page 28, *et. seq.*

18. The record demonstrates that Mr. Houston did not even have a written notice of appearance at the Final Hearing (as opposed to Mr. Chamberlin), and he merely used Mr. Chamberlin's notice, with Mr. Chamberlin's name crossed off, see Reply Appendix at page 18, *et. seq.*

19. See Record of Proceedings at Reply Appendix starting at page 18.

to counsel will be very materially impacted.

D. Adequate Notice:[20] The fundamental requirement of due process is opportunity to be heard at a meaningful time and in a meaningful manner.[21] Notice after a prosecutor has lost the exculpatory evidence, witnesses have disappeared and federal regulatory agencies friendly to the prosecutor fail to provide required defensive evidence can hardly be said to be meaningful.

The Respondent now justifies its delays by reference to the Referee's conclusion that they were caused by the Petitioner. The Respondent neither made such argument nor introduced evidence in support thereof, thus, such conclusion has no support in the record. Rather, the only delay to which the Referee could point in the entire proceeding attributable to the Petitioner was the Petitioner's successful challenge of the Referee's initial decision limiting issues at trial to the punishment that ought to be imposed on the Petitioner. A successful challenge to an erroneous material

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20. This issue was raised in the Final Hearing and in the Petitioner's Appeal Brief, see Reply Appendix at page 34, *et. seq.*

21. See Fuentes v Shevin, 92 S.Ct. 1983, 407 U.S. 67, 32 L.Ed 2d 556 (1972), and Matthews V Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed. 18 (1976).

ruling should not to be seen as exculpatory of the prosecution's delays, especially where all elements of prosecutorial delays detrimental to the Petitioner had already occurred. If prosecuting attorneys are permitted to assume control of the evidence and to try their cases after all exculpatory evidence has become unavailable as a result of prosecutorial neglect, such drastic change in fundamental due process should be based on a decision of this Court.

E. Evidentiary and Discovery Rulings:[22] The Respondent alleges that the Petitioner failed to "describe with any detail the nature of the discovery information denied him and the evidence ruled upon." While the Petitioner believes that such issue was adequately dealt with he has included his evidentiary requests in the Reply Appendix.[23] An examination of such materials makes it clear that deprivation of discovery rights associated therewith (in light of the fact that the Respondent assumed control of the Petitioner's copies of such materials and then lost them) was a deprivation of the

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22. These issues were raised in motions prior to the Final Hearing, at the Final Hearing and in the Petitioner's Briefs and Motion for Rehearing, see Reply Appendix at pages 4-16 (docket) and page 36 *et. seq.*

23. See Reply Appendix at page 111 *et. seq.* and 132 *et. seq.*

Petitioner's rights to due process.[24]

3. Denial of Equal Protection Rights

A. Costs:[25] The Respondent argues that under Florida law the issue of costs should be left to the referee. However, the referee's decision must be based on constitutionally permitted factors. Although noting the McCain Case,[26] the Respondent claims that nothing in the record reflects improprieties. That is because the issue of costs was not dealt with at the Final Hearing but rather by the Referee and counsel to the Respondent *ex parte*.

The Florida Supreme Court established the appropriate standards for assessment of costs in the McCain Case, where a former member of that court was the beneficiary of the decision, but did not follow them in the proceeding below.

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24. The Petition clearly states that the Petitioner was deprived of his right to have matters judicially noted under mandatory judicial notice provisions of Florida law and to introduce relevant, competent evidence (as a result of the refusal of the referee to take such notice or admit such evidence). Specifically he stated that "[a]mong the excluded materials were the judicial record of proceedings in the Gallagher Appeal and reports of the American Bar Association and the Association of the Bar of the City of New York dealing with ethical obligations of attorneys in matters involving securities laws."

25. This issue was initially raised by the Petitioner in his Motion for Rehearing, see "Reply Appendix at page 68, *et. seq.*

26. Florida Bar v McCain, 361 So.2d 700, 705 (Fla. 1978).

The fact that neither the Referee nor the Court explained the basis for their decision does not insulate it from the conclusion that persons who commit violations of Florida Bar rules receive preferential treatment based on their political connections.[27] That is sufficient to establish violation of both the due process and equal protection guarantees of the fourteenth amendment to the United States Constitution.

B. Right to Non-arbitrary, Cruel or Unusual Punishment: The Respondent claims that because disbarrment is not punitive, the Eighth Amendment's protection against "cruel and unusual punishment should not apply.[28] Disbarrment should not be punitive, however, as applied in the instant case, it was. The Respondent also claims that even if the disbarrment was punitive[29] the Petitioner failed to establish a sufficient federal question. Clearly since the United States Civil

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27. See Truax v Corrigan, 257 U.S. 320, 42 S.Ct. 124, 66 L.Ed 254 (1921), where Chief Justice Taft observed, "Our whole system of law is predicated on the general fundamental principal of equality before the law .... The guarantee was aimed at undue favor and individual or class privilege on the one hand, and a hostile discrimination or the oppression of inequality on the other."

28. This issue was initially raised by the Petitioner in his Motion for Rehearing, see Reply Appendix at page 70, *et. seq.*

29. As demonstrated in the Petition's analysis of the case of The Florida Bar v Neu, 597 So.2d 266 (Fla. 1992).

War the entire course of Supreme Court history has established that state violations of federal constitutional rights involve federal questions.[30]

The Respondent further argues that the multiplicity of punishment over a period of more than a decade is not a factor in determining whether or not punishment is cruel or inhuman. The Petitioner submits that such issue poses a timely and relevant question for determination by this Court.

C. *Prejudice Based on National Origin*:[31] The Respondent claims that the reference to the Petitioner's Colombian ancestry was mere biographical data; however, such reference was accompanied by citations to irrelevant cases involving attorneys engaged in narcotic trafficking designed to prejudice the Referee against the Petitioner. Had the reference been to an attorney's Afro-American background, followed by irrelevant citations to cases involving rape of caucasian women most decent people would have found the prosecutorial conduct outrageous. The prosecutorial conduct in the case

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30. *E.g.*, the series of cases involving the constitutionality of the death penalty decided by this Court.

31. This issue was raised in the Petitioner's Reply Brief to the Florida Supreme Court, see Reply Appendix at page 59 and in the Petitioner's Motion for Rehearing, see Reply Appendix at page 75.

below was improper and the Court should accept certiorari to develop standards necessary to avoid such conduct in the future.

4. Ex Post Facto Aspects

The Respondent claims that because a practicing attorney prepared the materials presented by the Respondent in a publication and seminar sponsored by the Respondent for which it was paid by attendees and for which it granted continuing legal education credits (rather than having been included among the specific rules of conduct promulgated by the Florida Supreme Court), such materials should not be deemed to represent the state of Florida law on such point.[32] That argument, in light of the fact that the Florida Supreme Court forces attorneys to become and remain members of the Respondent as a condition to practicing law in the State of Florida and further forces them to complete an average of 10 hours per year of continuing legal education in seminars approved by the Respondent, is not very persuasive.[33]

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32. Ignoring the vague nature of such promulgated rules and their reference to undefined outside factors.

33. See the Petitioner's reply under the caption "2. *Substantial Federal Questions Relating to Due Process - B. Ex Post facto Legislation*, especially the comments by Justice Douglas in Cohen v Hurley, *supra*. Such comments are especially relevant in the case below where the Florida

The Respondent is an arm of the Florida Supreme Court and as such is responsible for the performance of the duties delegated to it. It is not free to disassociate itself from programs it organizes, charges for and requires members to attend. This Court should review the decision below to determine whether as imposed and applied by the Florida Supreme Court through its agency, the Respondent, its regulation of the practice of law in the State of Florida passes minimal constitutional requirements.[34]

Supreme Court based its decision in large part on the belief that persons involved in the Warehouse matter had, although never charged, been guilty of committing crimes, as a result of which arguments alleging attorney client privilege were not relevant. That view is totally at odds with the recent decision by the United States District Court for the District of Massachusetts in *Austin, et al. v. Bradley, Barry & Tarlow, P.C., et al.*, reported at CCH F.Sec.L.Rep. Paragraph 98,219, see Reply Appendix at page 153, *et. seq.*, where under circumstances substantially more clear than those in the case below, that court found, citing Abell v. Potomac Ins. Co., 858 F.2d 1104, 1133 (5th Cir. 1988), cert. denied, 492 U.S. 918 (1989), that "Neither lawyers nor accountants are required to tattle on their clients in the absence of some duty to disclose. To the contrary, attorneys have privileges not to disclose.' "). For all their rhetoric, Plaintiffs have failed to indicate what duty the defendant law firms had. As Plaintiffs have failed to allege that the law firms represented them, no duty has been created between, them or with the public at large, and, therefore, the counts for primary violations of S10(b) and Rule 10b-5 cannot be maintained and must be dismissed."

34. That is especially important to the federal Court system since, as cited by the Respondent (referring to the case of *In Re Snyder*, 427 U.S. 634, 105 S.Ct. 2874, 86 L.Ed. 2d 504 [1985]), state bar rules are incorporated into rules regulating practice in the federal courts, and, in fact, at least three federal courts have a direct interest in this Court's decision in this matter based on proceedings initiated as a result of the decision of the

5. Federal Questions[35]

The Respondent argues that the instant case presents no federal questions, but rather was decided solely by reference to rules governing the Florida Bar. That its completely inaccurate. Amazingly, the proceeding below involved no analysis or interpretation of rules governing the Florida Bar.[36] In fact, the Respondent did not even introduce the text of the relevant rules at the final hearing, but rather, at the *ex parte* request of the Referee, weeks after the proceeding had been concluded. Perhaps most illustrative of the nature of the proceeding below is the Respondent's report thereof contained in its own publication, the Florida Bar News, January 15, 1994, reported on page 24, as follows:

> "**Securities Violation; Disbarrment**: William A. Calvo, III, P.O. Box 208, Belleview, disbarred effective January 15, 1994.
>
> In 1985, Calvo was working as counsel to persons involved in the

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Florida Supreme Court below.

35. The issue was initially raised at the Final Hearing, see Reply Appendix at page 17. It was discussed in detail in the Petitioner's Appeal Brief, Reply Brief and Motion for Rehearing, see Reply Appendix at pages 39, 59 and 75, respectively.

36. See the Petitioner's objection to the testimony of the Respondent's expert witness at the final hearing based on such fact, at page 17 of the Reply Appendix.

sale of federally regulated securities. Calvo and his clients were required to sell a minimum of 1.2 million shares within 150 days of the effective date of the prospectus. Failure to meet the requirements would mean that all monies paid by purchasers of the securities had to be returned. When it became apparent that the minimum number of shares would not be sold within the deadline, Calvo either became aware that his clients had arranged to obtain short term loans, or he participated in obtaining them. The loan proceeds were used to create the appearance that the minimum number of shares were being sold. Those who loaned money in turn were paid exorbitant fees, with one man receiving a profit of $75,000 for the use of a quarter million dollars for a single day. Prior to the closing dates, one of the principals involved in the securities offer was indicted for mail fraud. Calvo and his clients were required to disclose the information to potential investors. They did not. Closing did not occur until two weeks later than required, and without proper filings of notice or permission of the governing authorities, which Calvo knew, or should have known was required by law."

The proceeding below involved federal questions exclusively and the decisions based thereon clearly contradict interpretations of federal law both in the United States District Court for the Southern District of Florida,[37] other federal courts[38] and in this Court (see Central Bank of Den-

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37. See CCH F.SEC.L.Rep. Paragraph 98,110, *In re Cascade International Securities Litigation.*; United States District Court, Southern District of Florida, Case No. 91-8652-CIV-NESBITT, December 15, 1993, a copy of which is included in the Reply Appendix at page 166.

38. The governing cases clearly establish that in the context of federal securities laws an attorney has no disclosure duties to persons with whom he has no fiduciary relationship. They clearly establish that performance of traditional lawyer's functions will not form the basis for violations of federal securities laws. See, *Schatz, et. al. v Rosenberg, et. al.*, (4th Cir. 1991), reported at 91 CCH F.Sec.L.Rep. - Decisions - Paragraph 96,222; and *Camp v Dema, et. al.*, (8th Cir. 1991), reported at 91 CCH F.Sec.L.Rep. - Decisions - Paragraph 96,291.

ver, N.A. v First Interstate Bank, *supra*).

The Respondent urges this Court not to look behind the Florida Supreme Court's decision but rather to presume that it appropriately rested on exclusive state law grounds. That is supported by neither the record nor the Respondent's own published analysis thereof. More importantly in the context of federal questions is the impact of the Florida Supreme Court's decision on interstate commerce. None of the actions involved in the proceeding below involved Florida law. It is un-contradicted that the Petitioner was not involved in filing Warehouse materials with the State of Florida.[39] All of the Petitioner's legal obligations, if any, where imposed under federal laws. To the extent that obligations imposed by bar regulators were involved, the rules regulating the New York Bar and those regulating the practice of law under the United States District Courts for the Southern and Eastern Districts of New York and Southern District of Florida, and the United States Courts of Appeal for the Second, Fifth and Eleventh Circuits were equally applicable.[40] Indeed, the

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39. That function having been indisputably performed by the politically influential firm that replaced the Petitioner's law firm as counsel to the underwriter in October of 1984.

rules governing practice of law in the United States District Court for the District of Massachusetts would seem to have been controlling since the Warehouse registration was filed in the Boston Regional Office of the Securities and Exchange Commission.[41] This Court, not the Florida Supreme Court, should be the principal authority in deciding the issues presented by the case below. Rather than deferring to the Florida Supreme Court, this Court should, upon analysis of the issues presented, find that the decision of the Florida Supreme Court constitutes an improper intrusion into the federal realm of interstate commerce.

III. CONCLUSION

The arguments of the Respondent in its brief objecting to

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40. No state bar organization should be constitutionally permitted to impose obligations on attorneys involving the practice of federal law, which would require them to violate the ethical obligations imposed under the rules regulating the practice of law in other states or in the federal system.

41. The standards of the United States District Court for the District of Massachusetts are totally at odds with those of the Florida Supreme Court. See Austin, et al. v. Bradley, Barry & Tarlow, P.C., et al., *supra*. That decision's interpretation of an attorney's duties pertaining to client confidentiality are diametrically opposed to those espoused by the Florida Supreme Court in the action below.

certiorari are based on inaccurate legal and factual premises. The regulation of the practice of law in a federal system, involving federally imposed duties and in the context of interstate commerce, especially where the party seeking review is subject to regulation by two different states and more than six federal courts does not present issues which should be deferred to the courts of a single state. The issues raised are timely, have been extensively developed through litigation in a number of federal circuits (in addition to several states) and this Court has recently announced an interpretation of federal law that has a substantial impact on the applicable law. The Petitioner's constitutional arguments are likewise clear and have been properly raised below. All involve matters of fundamental importance to the operation of the nation's legal system. For all of the foregoing reasons, the Petitioner respectfully prays that this Court grant his Petition.

Respectfully submitted, this 15th day of September, 1994.

/s/William A. Calvo, III/s/
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